

Notice of Allowability

Application No.

10/031,607

Examiner

Fozia M Hamud

Applicant(s)

SAVITZKY ET AL.

Art Unit

1647

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 11/22/04.
2. ☒ The allowed claim(s) is/are 28 and 39 (now renumbered claims 1 and 2, respectively).
3. ☒ The drawings filed on 22 January 2002 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

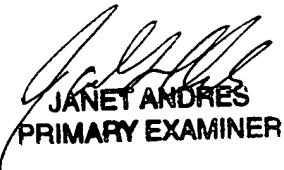
Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date 06/12/02; 01/22/02
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____


JANET ANDRES
PRIMARY EXAMINER

Examiner's Amendment:

1. An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R § 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the Issue Fee.

Authorization for this Examiner's Amendment was given in a telephone interview with Attorney Kristi Rupert on 15 February 2005.

2. The application has been amended as follows:

IN THE CLAIMS:

2a. In claim 28, line 1, after "isolated" insert -- polypeptide comprising the ---

2b. In claim 28, line 3, before "SEQ ID NO:7" insert -- set forth in---

2c. In claim 36, line 2, after "comprising" insert ---- the polypeptide of claim 28 and-----

2d. In claim 36, line 2, after "carrier" delete "and as an active ingredient an agent selected from the group consisting of any one of the amino acid sequence of claims 28".

2e. Please cancel claims 26-27, 30-35, 37-53 without prejudice or disclaimer.

REASONS FOR ALLOWANCE:

3a. The amendment to claims 28 and 36 overcame the rejection of claims 28 and 36 made under U.S.C. § 102 (b,e) as being anticipated by Stamenkovic et al (1989), Accession Number A60771 or Aruffo (U.S Patent NO:6,376,459). The cited references fail to disclose or suggest the subject matter of claims 28 and 36, (i.e the polypeptide of SEQ ID NO:7). The polypeptide disclosed by

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Stamenkovic et al (1989), Accession Number A60771 or Aruffo (U.S Patent NO:6,376,459, SEQ ID NO:2) share only 86% identity to the claimed polypeptide of SEQ ID NO: 7. Thus, claims 28 and 36 are free of prior art.

3b. The 37 CFR 1.132 Declaration filed by Amir Toporik is sufficient to overcome the rejection of claims 28 and 36 made under 35 U.S.C. § 101/112, for lacking either a specific and substantial asserted utility or a well established utility. The data submitted by Mr. Toporik demonstrates that the claimed polypeptide of SEQ IDNO:7 binds to the CD40 ligand and that it increases the secretion of RANTES. It is well known in the art, that RANTES (also known as CCL5) is a cytokine belonging to interleukin 8 superfamily and that its secretion is indicative of T cell activation. Thus one of ordinary skill in the art would be able to make and use the polypeptide of SEQ ID NO:7.

3c. The amendment to claims 28 and 36 overcame the rejection of claims 28 and 36 made under U.S.C. § 112, first paragraph for lacking written description, because the polypeptide of SEQ ID NO:7 is well described and the claims do not encompass structures that are not described.

3d. The amendment to claims 28 also overcame the rejection of claims 28 and 36 made under U.S.C. § 112, second paragraph, because claim 28 no longer recites "...in which one or more amino acids have been added, deleted, replaced or chemically modified".

Advisory Information:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fozia M Hamud whose telephone number is

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(571) 272-0884. The examiner can normally be reached on Monday, Thursday-Friday, 6:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda G Brumback can be reached on (571) 272-0961. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Fozia Hamud
Patent Examiner
Art Unit 1647
15 February 2005